

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALFRED LAM, et al.,  
Plaintiffs,  
v.

THE CITY & COUNTY OF SAN  
FRANCISCO, et al.,  
Defendants.

Case No. 10-cv-4641-PJH

**ORDER DENYING MOTION TO STAY**

Before the court is plaintiffs' motion to stay proceedings pending their appeal of the court's May 11, 2015 order, denying their motion for leave to file a fourth amended complaint. Plaintiffs did not notice the motion for hearing, nor does the court find it necessary to conduct a hearing, and hereby DENIES plaintiffs' motion.

The factors that the court considers in whether to issue a stay are as follows: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits, (2) whether the applicant will be irreparably injured absent a stay, (3) whether issuance of a stay will substantially injure the other parties interested in the proceeding, and (4) where the public interest lies. Golden Gate Restaurant Ass'n v. City and County of San Francisco, 512 F.3d 1112, 1115 (9th Cir. 2008) (citing Hilton v. Braunskill, 481 U.S. 770, 776 (1987)).

Although plaintiffs' motion falls short in establishing any of the four factors, the court is particularly persuaded by the fact that the order from which plaintiffs appeal is not a final, appealable order; and thus, the Ninth Circuit appears to lack jurisdiction over the appeal. See 28 U.S.C. § 1291; see also Nascimento v. Dummer, 508 F.3d 905, 908 (9th

1 Cir. 2007). If indeed the Ninth Circuit lacks jurisdiction over plaintiffs' appeal, plaintiffs  
2 certainly cannot show that they are likely to succeed on the merits.

3 Moreover, at factor (2), plaintiffs cannot show that they would be irreparably  
4 injured absent a stay. The only "injury" that would result from denial of a stay would be  
5 the requirement of plaintiffs' participation in the discovery process, hardly an "injury"  
6 (given that they filed this suit) nor "irreparable."

7 Accordingly, plaintiffs' motion to stay pending appeal is DENIED.

8 **IT IS SO ORDERED.**

9 Dated: July 16, 2015



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10 PHYLLIS J. HAMILTON  
11 United States District Judge  
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